

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

|                                      |   |                         |
|--------------------------------------|---|-------------------------|
| <b>FRANK PRUCHNIK,</b>               | ) |                         |
| <b>Plaintiff,</b>                    | ) |                         |
|                                      | ) | <b>CIVIL ACTION NO.</b> |
| <b>v.</b>                            | ) |                         |
|                                      | ) | <b>04-10868 NMG</b>     |
| <b>ROBERT BUERKLE GmbH &amp; CO.</b> | ) |                         |
| <b>Defendant.</b>                    | ) |                         |
|                                      | ) |                         |

**ROBERT BUERKLE GMBH'S  
ANSWER AND JURY DEMAND**

Robert Buerkle GmbH incorrectly sued as Robert Buerkle GmbH & Co.  
("Buerkle") responds to the plaintiff's complaint as follows:

1. Buerkle lacks sufficient knowledge and information to admit or deny the allegations in paragraph 1.
2. Buerkle admits that Robert Buerkle GmbH has a usual place of business at Stuttgarter Strasse 123, D-72250, Freudenstadt, Germany.
3. Denied.

**Count I: Negligence**

4. Admitted.
5. Denied.
- 6-7. Buerkle lacks sufficient knowledge and information to admit or deny the allegations in paragraphs 6 and 7.
- 8-10. Denied.

**Count II: Breach of Express and Implied Warranties of Merchantability**

11. Buerkle repeats and reavers its responses to paragraphs 1 through 10 as if set forth fully herein.

12. Buerkle admits that certain warranties arise by operation of law but denies that they are accurately stated in paragraph 12 and denies that it breached any warranty.
13. Denied.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to state a claim against Robert Buerkle upon which relief may be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

The plaintiff is barred from recovery in whole or in part because the plaintiff's alleged injuries and damages were caused by his own negligent conduct or other wrongdoing, which exceeded the combined negligence of the defendants.

#### **THIRD AFFIRMATIVE DEFENSE**

The plaintiff is barred from any recovery against Robert Buerkle because the plaintiff's alleged injuries and damages were caused by the acts or omissions of third persons over whom Robert Buerkle exercised no control and for whose conduct Robert Buerkle bears no responsibility.

#### **FOURTH AFFIRMATIVE DEFENSE**

If the subject finishing machine is defective, (which Robert Buerkle specifically denies), the plaintiff is barred from any recovery because the plaintiff was aware of the alleged defect and nonetheless voluntarily and unreasonably chose to encounter the known dangers created by the alleged defect, and was injured thereby.

**FIFTH AFFIRMATIVE DEFENSE**

The plaintiff is barred from any recovery against Robert Buerkle because the conduct of the plaintiff, considered alone or in conjunction with that of his employer and/or his co-workers, and/or any other parties, was the sole proximate cause of the plaintiff's alleged injuries and damages.

**SIXTH AFFIRMATIVE DEFENSE**

The plaintiff is barred from recovery because he or another party was misusing the subject product at the time of the accident.

**SEVENTH SEPARATE DEFENSE**

The plaintiff is barred from recovery against Robert Buerkle because the plaintiff's alleged injuries and damages were caused by the intervening and superseding actions of third persons.

**EIGHTH AFFIRMATIVE DEFENSE**

The plaintiff's claim against Robert Buerkle is barred insofar as it is based on a theory of breach of warranty because the plaintiffs failed to give Buerkle timely notice of the alleged breach thereby causing Buerkle undue prejudice.

**NINTH AFFIRMATIVE DEFENSE**

The plaintiff is barred from recovery in whole or in part because of his violation of applicable laws and regulations.

**TENTH AFFIRMATIVE DEFENSE**

The plaintiff is barred from recovery in whole or in part because he failed to mitigate his damages.

**ELEVENTH AFFIRMATIVE DEFENSE**

The plaintiff is barred from any recovery because he spoliated or otherwise failed to preserve crucial evidence.

**TWELFTH AFFIRMATIVE DEFENSE**

The plaintiff is barred from any recovery on any failure to warn claim because the danger presented by the finishing machine was obvious and the plaintiff was aware of the danger.

**THIRTEENTH AFFIRMATIVE DEFENSE**

The plaintiff's claims are barred by the statute of repose.

**JURY DEMAND**

Robert Buerkle demands a jury trial on all issues raised herein.

**ROBERT BUERKLE GmbH & CO,**  
By its attorneys,




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**CERTIFICATE OF SERVICE**

I certify that I mailed a copy of the above document to counsel of record for the plaintiff by first-class mail, postage prepaid on November 17, 2005.

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Christopher A. Callanan